

REMARKS/ARGUMENTS

Claims 1-4, 8-14, and 18-25 remain pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the following remarks.

Finality of Office Action

In a telephonic interview on June 30, 2009, the Examiner agreed with the Applicant that the finality of the May 11, 2009 Office Action was improper and should be withdrawn. The Applicant submitted that the new grounds for rejection in the Office Action were not necessitated by the Applicant's previous amendments. The new reference cited by the Examiner was not even cited against the amended elements of claims 20 and 24. Thus, as per the corresponding Interview Summary dated July 6, 2009, the finality of the Office Action should be withdrawn.

Miscellaneous Note Regarding IDS Forms

The Applicant notes that the PTO-1449 form that the Examiner faxed to the Applicant on 5/18/2009, showing consideration of references GA-GP filed with an IDS on 3/25/2008 and of references HA-HC filed with an IDS on 5/18/2009 are not shown as part of this matter's file history on PAIR. The Applicant respectfully requests that these forms be included in the file history on PAIR.

Allowable Subject Matter and Claims 13-14

On pages 10-13, the Examiner stated that claims 1-4, 8-12, 18, and 19 are allowed. On page 13, the Examiner stated that claim 25 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. In the Office Action, the Examiner did not specifically address claims 13-14, which are indicated as allowed in the Office Action Summary, form PTOL-326, accompanying the Office Action, and which depend variously from allowed claim 1. The Applicant respectfully requests that claims 13-14 be specifically indicated as allowed in the detailed action.

Prior-Art Rejections

On pages 2-8 of the Office Action, the Examiner rejected claims 20, 23, and 24 under 35 U.S.C. 103(a) as unpatentable over U.S. Pat. No. 6,882,627 to Pieda et al. ("Pieda") in view of U.S. Pat. No. 7,398,321 to Qiao et al. ("Qiao"), in further view of U.S. Pat. No. 6,130,875 to Doshi et al. ("Doshi"). On pages 8-10 of the Office Action, the Examiner rejected claims 21-22

under 35 U.S.C. 103(a) as unpatentable over Pieda, Qiao, and Doshi, in further view of U.S. Pat. No. 6,904,462 B1 to Sinha (“Sinha”).

Claims 20 and 24

In rejecting claim 20, the Examiner argued that the combination of Pieda, Qiao, and Doshi discloses all of the features of claim 20. In particular, the Examiner argued that the combination teaches the feature of “for each link of a specified set of links in the network: . . . (3) reducing the link’s assigned initial cost when it is determined that the link’s bandwidth can be shared with the new restoration path.” The Applicant submits that the proposed combination would not teach this feature.

Pieda teaches methods for selecting multiple paths through a network that take into account shared risks by transforming network topology into a virtual topology in a way that discourages the use of network resources in any shared risk group determined (*see, e.g.*, Pieda Abstract). The Examiner cited column 2, lines 10-30, of Pieda as allegedly and specifically teaching “determining whether the link’s bandwidth can be shared with a new restoration path for the new primary path.” The cited section, however, discusses shared risk groups, which comprise network resources, and not shared bandwidth on a link. The common use of the word “shared” does not make the two phrases equivalent or even similar. Identifying a second path through a network while taking into account shared risk groups is not the same as determining whether a link’s bandwidth can be shared. In fact, Pieda does not anywhere discuss sharing bandwidth, let alone determining whether that can be done. Therefore, it cannot be said that Pieda teaches this feature of claim 20.

The Examiner admitted that Pieda does not disclose “reducing the link’s assigned initial cost when it is determined that the link’s bandwidth can be shared with the new restoration path” (emphasis added). The Examiner cited column 12, lines 24-26, of Qiao as specifically teaching “reducing the link’s cost when it is determined that the link’s bandwidth . . . can be shared with the new restoration path.” The cited section of Qiao states “we want to reduce additional backup bandwidth needed to protect the connection, by allowing [backup segment] BS1 and [backup segment] BS2 to share more backup bandwidth with other existing [backup segments]. . . .” (emphasis added). However, reducing additional backup bandwidth is not an example of reducing cost since additional backup bandwidth is not a type of link cost. In fact, typically, reducing bandwidth increases link cost. Thus, the cited section says nothing about reducing a

cost initially assigned to a link. Indeed, Qiao does not anywhere teach reducing a link's assigned initial cost when it is determined that the link's bandwidth can be shared with a new restoration path. Consequently, it cannot be said that the cited references teach this requisite feature of claim 20.

In rejecting claim 20, the Examiner argued that Doshi teaches the feature of "calculating the minimum-cost restoration path for the new primary path using the specified set of links, wherein the cost of the minimum-cost restoration path is based on the sum of the costs of the links of the minimum-cost restoration path." The Applicant further submits that the combination does not teach the above-quoted requisite feature of claim 20.

In this regard, note that the Examiner cited Fig. 16B and column 30, lines 50-62, of Doshi as specifically teaching this feature. However, the cited sections refer to capacity, not cost. These cited sections say nothing about link costs, let alone a minimum-cost restoration path or the sum of the costs of the links of a minimum-cost restoration path. Thus, the rejection of claim 20 based on these cited sections is improper.

In view of the foregoing, the Applicant submits that claim 20 is allowable over the cited references. For similar reasons, the Applicant submits that claim 24 is also allowable over the cited references. Since claims 21-23 depend variously from claim 20, and claim 25 depends from claim 24, it is further submitted that those claims are also allowable over the cited references.

Claim 23

In rejecting claim 23, the Examiner argued that the combination of Pieda, Qiao, and Doshi teaches all of the claimed features of claim 23. In particular, the Examiner argued that Doshi teaches a method wherein (1) "a path pair cost is generated for each candidate primary path as the sum of the path cost of the candidate primary path and the path cost of the corresponding minimum-cost restoration path," and the method further comprises (2) "selecting (i) a candidate primary path from the set of candidate primary paths and (ii) the corresponding minimum-cost restoration path that together have the lowest path pair cost."

The Examiner cited column 33, lines 14-20, of Doshi as specifically teaching the above-quoted requisite features. Unfortunately, the Office Action mischaracterizes Doshi. The cited section of Doshi actually discusses free capacities on links. Free capacities are not examples of path costs. Thus, the cited section says nothing about costs, let alone (a) generating a path pair

cost as the sum of the path cost of a candidate primary path and the path cost of a corresponding minimum-cost restoration path or (b) selecting a candidate primary path and a corresponding minimum-cost restoration path that together have the lowest path pair cost. As a result, the rejection of claim 23 is improper.

Therefore, the Applicant submits that this provides further grounds for the allowability of claim 23 over the cited references.

Conclusion

In view of the above remarks, the Applicant believes that the pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to **Mendelsohn, Drucker, & Associates, P.C.** Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR § 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

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